

WATER CONVEYANCE FACILITIES SAFETY**ACT**

2010 GENERAL SESSION

STATE OF UTAH

LONG TITLE**General Description:**

This bill addresses the safety and management of water conveyance facilities.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ provides for the creation of a management plan for certain water conveyance facilities;
- ▶ allows the Division of Water Resources and an association of conservation districts to provide assistance in the creation of a management plan for a water conveyance facility;
- ▶ requires a report to a legislative committee concerning management plans;
- ▶ allows the Division of Water Resources to make rules concerning management plans for water conveyance facilities;
- ▶ addresses the effect of a management plan on civil actions against a water conveyance facility owner or operator;
- ▶ provides that a management plan and certain related records are protected records under Title 63G, Chapter 2, Government Records Access and Management Act; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

63G-2-305, as last amended by Laws of Utah 2009, Chapters 64 and 121

ENACTS:

73-10-33, Utah Code Annotated 1953

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **63G-2-305** is amended to read:

63G-2-305. Protected records.

The following records are protected if properly classified by a governmental entity:

(1) trade secrets as defined in Section 13-24-2 if the person submitting the trade secret has provided the governmental entity with the information specified in Section 63G-2-309;

(2) commercial information or nonindividual financial information obtained from a person if:

(a) disclosure of the information could reasonably be expected to result in unfair competitive injury to the person submitting the information or would impair the ability of the governmental entity to obtain necessary information in the future;

(b) the person submitting the information has a greater interest in prohibiting access than the public in obtaining access; and

(c) the person submitting the information has provided the governmental entity with the information specified in Section 63G-2-309;

(3) commercial or financial information acquired or prepared by a governmental entity to the extent that disclosure would lead to financial speculations in currencies, securities, or commodities that will interfere with a planned transaction by the governmental entity or cause substantial financial injury to the governmental entity or state economy;

(4) records the disclosure of which could cause commercial injury to, or confer a competitive advantage upon a potential or actual competitor of, a commercial project entity as defined in Subsection 11-13-103(4);

(5) test questions and answers to be used in future license, certification, registration, employment, or academic examinations;

(6) records the disclosure of which would impair governmental procurement proceedings or give an unfair advantage to any person proposing to enter into a contract or agreement with a governmental entity, except, subject to Subsections (1) and (2), that this Subsection (6) does not restrict the right of a person to have access to, once the contract or

grant has been awarded, a bid, proposal, or application submitted to or by a governmental entity in response to:

(a) a request for bids;

(b) a request for proposals;

(c) a grant; or

(d) other similar document;

(7) records that would identify real property or the appraisal or estimated value of real or personal property, including intellectual property, under consideration for public acquisition before any rights to the property are acquired unless:

(a) public interest in obtaining access to the information outweighs the governmental entity's need to acquire the property on the best terms possible;

(b) the information has already been disclosed to persons not employed by or under a duty of confidentiality to the entity;

(c) in the case of records that would identify property, potential sellers of the described property have already learned of the governmental entity's plans to acquire the property;

(d) in the case of records that would identify the appraisal or estimated value of property, the potential sellers have already learned of the governmental entity's estimated value of the property; or

(e) the property under consideration for public acquisition is a single family residence and the governmental entity seeking to acquire the property has initiated negotiations to acquire the property as required under Section 78B-6-505;

(8) records prepared in contemplation of sale, exchange, lease, rental, or other compensated transaction of real or personal property including intellectual property, which, if disclosed prior to completion of the transaction, would reveal the appraisal or estimated value of the subject property, unless:

(a) the public interest in access outweighs the interests in restricting access, including the governmental entity's interest in maximizing the financial benefit of the transaction; or

(b) when prepared by or on behalf of a governmental entity, appraisals or estimates of the value of the subject property have already been disclosed to persons not employed by or under a duty of confidentiality to the entity;

(9) records created or maintained for civil, criminal, or administrative enforcement

purposes or audit purposes, or for discipline, licensing, certification, or registration purposes, if release of the records:

(a) reasonably could be expected to interfere with investigations undertaken for enforcement, discipline, licensing, certification, or registration purposes;

(b) reasonably could be expected to interfere with audits, disciplinary, or enforcement proceedings;

(c) would create a danger of depriving a person of a right to a fair trial or impartial hearing;

(d) reasonably could be expected to disclose the identity of a source who is not generally known outside of government and, in the case of a record compiled in the course of an investigation, disclose information furnished by a source not generally known outside of government if disclosure would compromise the source; or

(e) reasonably could be expected to disclose investigative or audit techniques, procedures, policies, or orders not generally known outside of government if disclosure would interfere with enforcement or audit efforts;

(10) records the disclosure of which would jeopardize the life or safety of an individual;

(11) records the disclosure of which would jeopardize the security of governmental property, governmental programs, or governmental recordkeeping systems from damage, theft, or other appropriation or use contrary to law or public policy;

(12) records that, if disclosed, would jeopardize the security or safety of a correctional facility, or records relating to incarceration, treatment, probation, or parole, that would interfere with the control and supervision of an offender's incarceration, treatment, probation, or parole;

(13) records that, if disclosed, would reveal recommendations made to the Board of Pardons and Parole by an employee of or contractor for the Department of Corrections, the Board of Pardons and Parole, or the Department of Human Services that are based on the employee's or contractor's supervision, diagnosis, or treatment of any person within the board's jurisdiction;

(14) records and audit workpapers that identify audit, collection, and operational procedures and methods used by the State Tax Commission, if disclosure would interfere with audits or collections;

(15) records of a governmental audit agency relating to an ongoing or planned audit until the final audit is released;

(16) records prepared by or on behalf of a governmental entity solely in anticipation of litigation that are not available under the rules of discovery;

(17) records disclosing an attorney's work product, including the mental impressions or legal theories of an attorney or other representative of a governmental entity concerning litigation;

(18) records of communications between a governmental entity and an attorney representing, retained, or employed by the governmental entity if the communications would be privileged as provided in Section 78B-1-137;

(19) (a) (i) personal files of a state legislator, including personal correspondence to or from a member of the Legislature; and

(ii) notwithstanding Subsection (19)(a)(i), correspondence that gives notice of legislative action or policy may not be classified as protected under this section; and

(b) (i) an internal communication that is part of the deliberative process in connection with the preparation of legislation between:

(A) members of a legislative body;

(B) a member of a legislative body and a member of the legislative body's staff; or

(C) members of a legislative body's staff; and

(ii) notwithstanding Subsection (19)(b)(i), a communication that gives notice of legislative action or policy may not be classified as protected under this section;

(20) (a) records in the custody or control of the Office of Legislative Research and General Counsel, that, if disclosed, would reveal a particular legislator's contemplated legislation or contemplated course of action before the legislator has elected to support the legislation or course of action, or made the legislation or course of action public; and

(b) notwithstanding Subsection (20)(a), the form to request legislation submitted to the Office of Legislative Research and General Counsel is a public document unless a legislator asks that the records requesting the legislation be maintained as protected records until such time as the legislator elects to make the legislation or course of action public;

(21) research requests from legislators to the Office of Legislative Research and General Counsel or the Office of the Legislative Fiscal Analyst and research findings prepared

156 in response to these requests;

157 (22) drafts, unless otherwise classified as public;

158 (23) records concerning a governmental entity's strategy about collective bargaining or
159 pending litigation;

160 (24) records of investigations of loss occurrences and analyses of loss occurrences that
161 may be covered by the Risk Management Fund, the Employers' Reinsurance Fund, the
162 Uninsured Employers' Fund, or similar divisions in other governmental entities;

163 (25) records, other than personnel evaluations, that contain a personal recommendation
164 concerning an individual if disclosure would constitute a clearly unwarranted invasion of
165 personal privacy, or disclosure is not in the public interest;

166 (26) records that reveal the location of historic, prehistoric, paleontological, or
167 biological resources that if known would jeopardize the security of those resources or of
168 valuable historic, scientific, educational, or cultural information;

169 (27) records of independent state agencies if the disclosure of the records would
170 conflict with the fiduciary obligations of the agency;

171 (28) records of an institution within the state system of higher education defined in
172 Section 53B-1-102 regarding tenure evaluations, appointments, applications for admissions,
173 retention decisions, and promotions, which could be properly discussed in a meeting closed in
174 accordance with Title 52, Chapter 4, Open and Public Meetings Act, provided that records of
175 the final decisions about tenure, appointments, retention, promotions, or those students
176 admitted, may not be classified as protected under this section;

177 (29) records of the governor's office, including budget recommendations, legislative
178 proposals, and policy statements, that if disclosed would reveal the governor's contemplated
179 policies or contemplated courses of action before the governor has implemented or rejected
180 those policies or courses of action or made them public;

181 (30) records of the Office of the Legislative Fiscal Analyst relating to budget analysis,
182 revenue estimates, and fiscal notes of proposed legislation before issuance of the final
183 recommendations in these areas;

184 (31) records provided by the United States or by a government entity outside the state
185 that are given to the governmental entity with a requirement that they be managed as protected
186 records if the providing entity certifies that the record would not be subject to public disclosure

187 if retained by it;

188 (32) transcripts, minutes, or reports of the closed portion of a meeting of a public body
189 except as provided in Section 52-4-206;

190 (33) records that would reveal the contents of settlement negotiations but not including
191 final settlements or empirical data to the extent that they are not otherwise exempt from
192 disclosure;

193 (34) memoranda prepared by staff and used in the decision-making process by an
194 administrative law judge, a member of the Board of Pardons and Parole, or a member of any
195 other body charged by law with performing a quasi-judicial function;

196 (35) records that would reveal negotiations regarding assistance or incentives offered
197 by or requested from a governmental entity for the purpose of encouraging a person to expand
198 or locate a business in Utah, but only if disclosure would result in actual economic harm to the
199 person or place the governmental entity at a competitive disadvantage, but this section may not
200 be used to restrict access to a record evidencing a final contract;

201 (36) materials to which access must be limited for purposes of securing or maintaining
202 the governmental entity's proprietary protection of intellectual property rights including patents,
203 copyrights, and trade secrets;

204 (37) the name of a donor or a prospective donor to a governmental entity, including an
205 institution within the state system of higher education defined in Section 53B-1-102, and other
206 information concerning the donation that could reasonably be expected to reveal the identity of
207 the donor, provided that:

208 (a) the donor requests anonymity in writing;

209 (b) any terms, conditions, restrictions, or privileges relating to the donation may not be
210 classified protected by the governmental entity under this Subsection (37); and

211 (c) except for an institution within the state system of higher education defined in
212 Section 53B-1-102, the governmental unit to which the donation is made is primarily engaged
213 in educational, charitable, or artistic endeavors, and has no regulatory or legislative authority
214 over the donor, a member of the donor's immediate family, or any entity owned or controlled
215 by the donor or the donor's immediate family;

216 (38) accident reports, except as provided in Sections 41-6a-404, 41-12a-202, and
217 73-18-13;

218 (39) a notification of workers' compensation insurance coverage described in Section
219 34A-2-205;

220 (40) (a) the following records of an institution within the state system of higher
221 education defined in Section 53B-1-102, which have been developed, discovered, disclosed to,
222 or received by or on behalf of faculty, staff, employees, or students of the institution:

223 (i) unpublished lecture notes;

224 (ii) unpublished notes, data, and information:

225 (A) relating to research; and

226 (B) of:

227 (I) the institution within the state system of higher education defined in Section
228 53B-1-102; or

229 (II) a sponsor of sponsored research;

230 (iii) unpublished manuscripts;

231 (iv) creative works in process;

232 (v) scholarly correspondence; and

233 (vi) confidential information contained in research proposals;

234 (b) Subsection (40)(a) may not be construed to prohibit disclosure of public
235 information required pursuant to Subsection 53B-16-302(2)(a) or (b); and

236 (c) Subsection (40)(a) may not be construed to affect the ownership of a record;

237 (41) (a) records in the custody or control of the Office of Legislative Auditor General
238 that would reveal the name of a particular legislator who requests a legislative audit prior to the
239 date that audit is completed and made public; and

240 (b) notwithstanding Subsection (41)(a), a request for a legislative audit submitted to the
241 Office of the Legislative Auditor General is a public document unless the legislator asks that
242 the records in the custody or control of the Office of Legislative Auditor General that would
243 reveal the name of a particular legislator who requests a legislative audit be maintained as
244 protected records until the audit is completed and made public;

245 (42) records that provide detail as to the location of an explosive, including a map or
246 other document that indicates the location of:

247 (a) a production facility; or

248 (b) a magazine;

249 (43) information:

250 (a) contained in the statewide database of the Division of Aging and Adult Services

251 created by Section 62A-3-311.1; or

252 (b) received or maintained in relation to the Identity Theft Reporting Information

253 System (IRIS) established under Section 67-5-22;

254 (44) information contained in the Management Information System and Licensing

255 Information System described in Title 62A, Chapter 4a, Child and Family Services;

256 (45) information regarding National Guard operations or activities in support of the

257 National Guard's federal mission;

258 (46) records provided by any pawn or secondhand business to a law enforcement

259 agency or to the central database in compliance with Title 13, Chapter 32a, Pawnshop and

260 Secondhand Merchandise Transaction Information Act;

261 (47) information regarding food security, risk, and vulnerability assessments performed

262 by the Department of Agriculture and Food;

263 (48) except to the extent that the record is exempt from this chapter pursuant to Section

264 63G-2-106, records related to an emergency plan or program prepared or maintained by the

265 Division of Homeland Security the disclosure of which would jeopardize:

266 (a) the safety of the general public; or

267 (b) the security of:

268 (i) governmental property;

269 (ii) governmental programs; or

270 (iii) the property of a private person who provides the Division of Homeland Security

271 information;

272 (49) records of the Department of Agriculture and Food relating to the National

273 Animal Identification System or any other program that provides for the identification, tracing,

274 or control of livestock diseases, including any program established under Title 4, Chapter 24,

275 Utah Livestock Brand and Anti-theft Act or Title 4, Chapter 31, Livestock Inspection and

276 Quarantine;

277 (50) as provided in Section 26-39-501:

278 (a) information or records held by the Department of Health related to a complaint

279 regarding a child care program or residential child care which the department is unable to

280 substantiate; and

281 (b) information or records related to a complaint received by the Department of Health

282 from an anonymous complainant regarding a child care program or residential child care;

283 (51) unless otherwise classified as public under Section 63G-2-301 and except as

284 provided under Section 41-1a-116, an individual's home address, home telephone number, or

285 personal mobile phone number, if:

286 (a) the individual is required to provide the information in order to comply with a law,

287 ordinance, rule, or order of a government entity; and

288 (b) the subject of the record has a reasonable expectation that this information will be

289 kept confidential due to:

290 (i) the nature of the law, ordinance, rule, or order; and

291 (ii) the individual complying with the law, ordinance, rule, or order;

292 (52) the name, home address, work addresses, and telephone numbers of an individual

293 that is engaged in, or that provides goods or services for, medical or scientific research that is:

294 (a) conducted within the state system of higher education, as defined in Section

295 53B-1-102; and

296 (b) conducted using animals;

297 (53) an initial proposal under Title 63M, Chapter 1, Part 26, Government Procurement

298 Private Proposal Program, to the extent not made public by rules made under that chapter;

299 (54) information collected and a report prepared by the Judicial Performance

300 Evaluation Commission concerning a judge, unless Section 20A-7-702 or Title 78A, Chapter

301 12, Judicial Performance Evaluation Commission Act, requires disclosure of, or makes public,

302 the information or report;

303 (55) (a) records of the Utah Educational Savings Plan Trust created under Section

304 53B-8a-103 if the disclosure of the records would conflict with its fiduciary obligations;

305 (b) proposals submitted to the Utah Educational Savings Plan Trust; and

306 (c) contracts entered into by the Utah Educational Savings Plan Trust and the related

307 payments;

308 (56) records contained in the Management Information System created in Section

309 62A-4a-1003;

310 (57) records provided or received by the Public Lands Policy Coordinating Office in

furtherance of any contract or other agreement made in accordance with Section 63J-4-603;
[and]

(58) information requested by and provided to the Utah State 911 Committee under
Section 53-10-602[-]; and

(59) a management plan for a water conveyance facility and review documents in the
possession of the Division of Water Resources, in accordance with Section 73-10-33.

Section 2. Section **73-10-33** is enacted to read:

73-10-33. Management plan for water conveyance facilities.

(1) As used in this section:

(a) "Board" means the Board of Water Resources created by Section 73-10-1.5.

(b) "Conservation district" means a Conservation District created under Title 17D,
Chapter 3, Conservancy District Act.

(c) "Division" means the Division of Water Resources created by Section 73-10-18.

(d) "Facility owner-operator" means:

(i) a water company as defined in Subsection 73-3-3.5(1)(b); or

(ii) an owner-operator of a water conveyance facility for which a management plan is
required under Subsection (2).

(e) "Hazard" means a condition where, if a water conveyance facility fails, the failure
would create a high probability of:

(i) causing loss of human life;

(ii) causing extensive economic loss, including damage to critical transportation or
utility facilities, or a public building; or

(iii) causing appreciable damage to private property, to transportation or utility
facilities, or to a public building.

(f) "Management plan" means a written document prepared under Subsection (2).

(g) (i) "Water conveyance facility" means a water conveyance defined in Section
57-13a 101.

(ii) "Water conveyance facility" does not include a pipeline conveying water for
industrial or municipal use within a public water system as defined in Section 19-4-102.

(2) The owner or operator of a canal or other water conveyance facility shall prepare a
written management plan for each segment of a water conveyance facility that:

342 (a) due to location, elevation, soil conditions, structural instability, water volume or
343 pressure, or other conditions constitutes a hazard; or

344 (b) has the capacity to convey or is designed to convey flows of at least 20 cubic feet
345 per second.

346 (3) A management plan required by Subsection (2) shall include at least the following:

347 (a) a GIS coverage or drawing of the location of each water conveyance facility for
348 which a management plan is required, identifying any:

349 (i) existing canal and lateral alignment of the canal facility;

350 (ii) point of diversion;

351 (iii) bridge;

352 (iv) culvert;

353 (v) screen or trash rack; and

354 (vi) spill point;

355 (b) an evaluation of any potential slope instability that may cause a hazard, including:

356 (i) failure of the facility; or

357 (ii) land movement that might result from failure of the facility;

358 (c) (i) proof of insurance coverage against liability resulting from failure of the water
359 conveyance facility; or

360 (ii) a statement that the facility owner-operator has no insurance coverage against
361 liability resulting from failure of the water conveyance facility;

362 (d) a maintenance and improvement plan;

363 (e) a schedule for implementation of a maintenance and improvement plan;

364 (f) an emergency response plan developed after consultation with local emergency
365 response officials and updated annually;

366 (g) any potential source of financing for maintenance and improvements under a
367 maintenance and improvement plan;

368 (h) identification of each municipality or county through which water is conveyed or
369 delivered by the water conveyance facility; and

370 (i) a statement concerning whether storm water enters the water conveyance facility;

371 and

372 (j) if storm water enters the water conveyance facility;

373 (i) an estimate of the maximum volume and flow of all water present in the water
374 conveyance facility as a result of a twenty-four hour, twenty year storm event;

375 (ii) identification of the points at which any storm structures introduce water into the
376 water conveyance facility and the anticipated flow that may occur at each structure; and

377 (iii) the name of each governmental agency that has responsibility for storm water
378 management within the area from which storm water drains into the water conveyance facility.

379 (4) The division or an association comprised of conservation districts may provide
380 information and technical resources for a facility owner-operator to comply with this section,
381 including:

382 (a) engaging state and local water users in voluntary compliance with this section and
383 completion of a management plan;

384 (b) developing standard guidelines, checklists, or templates that may be used by a
385 facility owner;

386 (c) utilizing conservation districts as points of contact with facility owners;

387 (d) providing training to help a facility owner-operator comply with this section; and

388 (e) assisting, at the request and under the direction of, a facility owner-operator with
389 efforts to comply with this section or to implement a management plan.

390 (5) (a) A facility owner- operator shall:

391 (i) register with the division on or before December 31, 2010;

392 (ii) prepare and adopt a management plan and file a certification of the approved
393 management plan with the division on or before May 1, 2013;

394 (iii) make the management plan available for division review; and

395 (iv) update its canal management plan no less frequently than every 10 years.

396 (b) A plan prepared and reviewed under Subsection (5)(a) is a protected record under
397 Section 63G-2-305.

398 (6) The board shall report concerning compliance with this section to the Natural
399 Resources, Agriculture, and Environment Interim Committee of the Legislature before
400 November 30, 2013.

401 (7) A water conveyance facility owner-operator may not receive loans from the board
402 or other state funds for water development or water conveyance facility repair or
403 improvements, if it does not have a management plan that complies with this section.

404 (8) The division and board may make rules, in accordance with Title 63G, Chapter 3,
405 Utah Administrative Rulemaking Act, concerning this section's requirements.

406 (9) This section does not:

407 (a) create a private right of action for a violation of this section; or

408 (b) limit or impair a person's right to sue and recover damages from a facility
409 owner-operator in a civil action for a cause of action that is not based on a violation of this
410 section.

411 (10) The failure of a canal company or irrigation district to prepare, adopt, or update a
412 management plan required by this section may not be introduced as evidence in any civil
413 litigation on the issue of negligence, injury, or the calculation of damages.